

Agreement of Shelby County Government and Shelby County Schools for Participation in the Qualified School Construction Bond Program

This Agreement is entered into this _____ day of _____, 2009 by and between SHELBY COUNTY GOVERNMENT (hereinafter “County”) a Tennessee public body corporation located at 160 N. Main St. Memphis, TN 38103, and the Shelby County Schools, (hereinafter “SCS”) a public school district authorized by the State of Tennessee, having its main office at 160 South Hollywood Street, Memphis, TN 38112.

I. RECITALS

WHEREAS, pursuant to the Tennessee State School Bond Authority Act, Sections 49-3-1201, et seq., Tennessee Code Annotated, as amended (the “Act”), the Tennessee State School Bond Authority (the “Authority”) is authorized to issue its bonds or notes (“Qualified School Construction Bonds”) to make loans to any county, metropolitan government or incorporated city or town, in the State to provide funds to acquire land for and to construct, repair, rehabilitate, improve or equip schools for such local governments, if the same qualifies to be financed through the issuance of “qualified school construction bonds” as defined in Section 54F of the Internal Revenue Code of 1986, as amended (the “Code”) (“Qualified School Construction Bond Projects”); and

WHEREAS, pursuant to Tenn. Code Ann. § 5-1-201, et seq., COUNTY is a duly organized public body corporation thereby being an independent local governmental entity, existing under the laws of the State of Tennessee, as evidenced by the Shelby County Charter, dated as of August 2, 1984 (the “County Charter”); and

WHEREAS, SCS is a local school district existing under the laws of the State of Tennessee; and

WHEREAS, the SCS applied to the Tennessee School Bond Authority (Authority) to participate in Qualified School Construction Bonds (hereinafter “QSCB”) for replacement of the Elmore Park Middle School and was awarded \$13,797,000 for said purposes (the “funds”); and

WHEREAS, under the State QSCB program, a local government is required to enter into a loan agreement with the State for the purpose of providing pass through funding to the local school district and COUNTY has agreed to enter into a loan agreement (the “Loan Agreement”) with the Authority as the local government entity to allow SCS to participate in said program; and

WHEREAS, the Authority has determined that it will issue its Qualified School Construction Bonds, Series 2009 (the “Bonds”), for the purpose of making loans to the County, to fund Qualified School Construction Bond Projects; and

WHEREAS, SCS intends to use the funds to finance the replacement of the Elmore Park Middle School; and

WHEREAS, it is agreed between the COUNTY and the SCS that the loan funding will be passed through SCS as capital improvement funds and said loan amounts shall be repaid to the Authority in the manner as required in the Loan Agreement by and between the Authority and the County which is attached hereto as Exhibit A and incorporated herein by reference; and

NOW, THEREFORE, in consideration of the above recitals, the following covenants and conditions, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereby agree as follows:

II. AGREEMENT TERMS

1. The findings of the parties set forth in the foregoing recitals are hereby adopted by the parties hereto and incorporated herein.

1.1. SCS hereby accepts and agrees to utilize funds only in the manner prescribed by the terms of the QSCB Loan Agreement by and between the County and Authority. SCS hereby agrees that it is responsible for complying with all requirements regarding use of funds specified in the Loan Agreement, including, but not limited to Sections 2.03, 2.05 and 2.07 thereof, and will be responsible for all costs incurred for any failure to comply with those terms, including, but not limited to costs incurred as a result of the application of Sections 5.02, 6.01, 6.02 and Section 8.01 of the Loan Agreement.

1.2. SCS hereby agrees to provide the County documentation of all expenditures and agrees to comply with the terms of the Loan Agreement, including, but not limited to Section 2.04 and Exhibit A thereof. Upon receipt and approval of documentation of expenditures, the County will submit a reimbursement request to the Authority. Upon receiving reimbursement from the Authority, the County will promptly provide reimbursement to SCS.

1.3. SCS hereby accepts and agrees to be bound by the terms of Loan Agreement prescribing the methods of default as specified within said document. SCS agrees that failure to expend the entire \$13,797,000, or any breach of the requirements of the Bonds or breach of any requirements of the Authority may result in additional costs. SCS agrees to pay or reimburse the County for any such additional costs.

1.4. SCS hereby accepts and agrees that the issuance costs charged by the Authority will be paid as an expenditure of SCS and payment thereof by County will be considered a portion of the capital allocation to SCS. SCS further accepts and agrees that Administrative Fees and expenses charged by the Authority will be paid by the SCS and said fees may not be paid by the proceeds of this loan.

1.5 SCS hereby acknowledges and agrees that there are certain covenants and representations of the Borrower (as defined in the Loan Agreement), as set forth in Section 4.02 of the Loan Agreement, certain actions that must be taken to preserve the tax status of the Bonds, as contemplated by Section 2.07 of the Loan Agreement, and an agreement by the Borrower to indemnify the Authority in certain instances, as set forth in Section 8.01 of the Loan Agreement. SCS agrees that such covenants, representations, indemnifications and agreements are binding upon and the responsibility of SCS.

1.6. SCS accepts and agrees to reimburse Shelby County for payments on the QSCB loan from annual capital allocation amounts from County for the expected loan term of 16 years. SCS agrees that the County shall deduct payment amounts annually for the Loan Agreement from any capital improvement budget allocation to SCS. In the event that the capital allocation amount from County to SCS is not sufficient to make the principal payment for any annual payment on the Loan Agreement, County will deduct such amount from subsequent capital allocation budgeted amounts for SCS. SCS hereby agrees and authorizes County to withhold such amounts from the capital allocation amount required for principal payments on this loan.

2. **Further Documents and Assurances.** The Parties shall each diligently and in good faith provide all further information, execute and deliver all further documents and undertake all further actions as are customary and/or reasonably necessary to timely close and consummate the conveyance transactions contemplated by this Agreement.

3. **Representations and Covenants of the SCS and County.** The SCS and County individually represent and covenant as of the date of this Agreement that:

a. it is duly organized and validly existing under the laws of the State of Tennessee;

b. to its knowledge it is not in violation of or in conflict with any provisions of the laws of the State of Tennessee or its charter that would impair its ability to carry out its obligations under this Loan Agreement;

c. it is empowered to enter into the transactions contemplated by this Agreement which Agreement has been authorized by proper and lawful action of its governing body as evidenced by its Resolution attached and included as part of Exhibit C; and

d. this Agreement has by proper action been fully authorized, executed and delivered by the Party and all steps necessary have been taken to constitute this Agreement as a valid and binding obligation of the Party; and to its knowledge there is no litigation or proceeding pending or threatened against the Party or any other entity effecting in any manner whatsoever the right of the Party to execute this Agreement or to otherwise comply with its obligations contained in this Agreement.

4. **Governing Law.** This Agreement shall be governed, construed, and enforced according to the laws of the State of Tennessee.

5. **Number and Gender.** Wherever used the singular number shall include the plural, the plural the singular, and the use of the any gender be applicable to all genders, as the context may require.

6. **Counterparts and Signatures.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which when taken together shall constitute one and the same instrument.

7. **Verbal Agreements.** It is specifically stipulated that there are no verbal agreements or understandings between the parties hereto affecting this Agreement, which have not been set forth expressly herein. This Agreement constitutes a final and complete integration of those understandings.

8. **Parties to be Bound.** The Parties each bind themselves, their partners, successors, executors, administrators and assigns to this Agreement.

9. **Amendments.** Any amendments or revisions to this Agreement are effective only if made in writing, duly approved by each Party and executed by both Parties.

10. **Entire Agreement.** This Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations whether oral or written.

11. **Severability.** If any provision of this Agreement is held to be unlawful, invalid or unenforceable under any present or future laws, such provision shall be fully severable; and this Agreement shall then be construed and enforced as if such unlawful, invalid or unenforceable provision had not been a part hereof. The remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such unlawful, invalid or unenforceable provision or by its severance here from. Furthermore, in lieu of such unlawful, invalid, or unenforceable provision, there shall be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such unlawful, invalid or unenforceable provision as possible.

12. **No Waiver of Agreement Right.** No waiver of any term, condition, default, or breach of this Agreement, or of any document executed pursuant hereto, shall be effective unless in writing and executed by the party making such waiver; and no such waiver shall operate as a waiver of either (a) such term, condition, default, or breach on any other occasion or (b) any other term, condition, default, or breach of this Agreement or of such document. No delay or failure to enforce any provision in this Agreement or in any document executed pursuant hereto shall operate as a waiver of such provision or any other provision herein or in any document related hereto. The enforcement by any party of any right or remedy it may have under this Agreement or applicable law shall not

be deemed an election of remedies or otherwise prevent such party from enforcement of one or more other remedies at any time.

13. **Matters to be Disregarded.** The titles of the several sections, subsections, and paragraphs set forth in this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

14. **Notice.** Any notices required or permitted to be given under the provisions of this Agreement shall be effective only if in writing and delivered either in person to the COUNTY's authorized agent or by First Class or U.S. Mail to the addresses set forth below, or to such other person or address as either party may designate in writing and deliver as herein provided:

COUNTY: Shelby County Government
Department of Finance
and Administration
8th Floor
Memphis, Tennessee 38103
Attn.: James Huntzicker

and

Shelby County Government
Agreement Administration
160 N. Main Street, Suite 550
Memphis, Tennessee 38103

SCS

Attn.:

IN WITNESS WHEREOF, the parties hereto have set their signatures for the purposes contained herein, on the day and date first above written.

**APPROVED AS TO FORM
AND LEGALITY:**

SHELBY COUNTY GOVERNMENT

Contracts Administrator/
Assistant County Attorney

Shelby County Mayor

**APPROVED AS TO FORM
AND LEGALITY:**

SHELBY COUNTY SCHOOLS

Chief Contracting Officer

By: _____
Superintendent

Office of General Counsel

By: _____
President, Board of Education